IN THE HIGH COURT OF JUDICATURE AT MADRAS.

DATE: 23.3.2002

CORAM:

THE HONOURABLE MR. JUSTICE N.V.BALASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE A.K.RAJAN

W.A.No.122 of 1997

Sri Kasi Mutt, Educational Agency of
Sri Kumaragurubara Swamigal Arts College,
Srivaikuntam and Sri Kasivasi Swaminatha
Swamigal Arts College, Tirupanandal rep.
By its President, Srilasri Kasivasi
Muthukumaraswamy Thambiran Swamigal.
... Appellant.
vs.
1.The Commissioner of Collegiate Education,
College Road, Chennai-600 006.

2.The Regional Joint Director of Collegiate Education,
Tiruchirapalli.

3.The Regional Joint Director, Collegiate Education,
Tirunelveli.

4.Thirugnanasambandam.
... Respondents.

The appeal is filed to set aside the order passed in
W.P.No.15624 of 1995 dated 14.11.1996.

! For appellant :: Mr.G.Subramaniam, Sr.Counsel for
Mr.N.Paul Vasanthakumar.

^ For respondents :: Mr.V.R.Rajasekaran Spl.G.P.(Edn)-Rr.1-3
Mr.K.Chandru, Sr.Counsel for
Mr.Muthupandian. -R-4

: JUDGMENT

This appeal is directed against the judgment rendered in W.P.No.156 24 of 1995 dated 14.11.1996. The writ petitioner who was unsuccessful in the writ petition is the appellant herein and the parties are hereinafter referred to as arrayed in the writ petition.
2. The writ petition was filed for the issue of a writ of Certiorarified Mandamus to quash the order of the first respondent

dated 26.10 .1996 passed in proceedings Na.Ka.No.39361/GII/95 and to direct the first respondent to approve the resolution of the management dated 11.7.1995 with effect from 15.7.1995.

3. The writ petitioner is Sri Kasi Mutt and the case of the petitioner is that it is an educational agency for two colleges, viz., Sri Kumaragurubara Swamigal and Sri Kasi Vasi Swaminatha Swamigal Arts Colleges, Srivaikundam and Tirupanandal respectively. The case of the appellant/petitioner is that the petitioner institution is a Saivite religious denominational minority institution within the meaning of Article 30(1) of the Constitution of India. I n the petition there is a reference to the suit filed in O.S.348 of 1983 on the file of the District Munsif's Court, Kumbakonam which was later transferred to the Sub Court, Kumbakonam and renumbered as O.S.No.18 of 1985 and the appeal in A.S.No.62 of 1986 on the file of the District Court, West Thanjavur at Thanjavur and it is stated that in the said proceedings the petitioner was declared as a denominational minority educational institution.

4. It is stated that the fourth respondent herein was a lecturer in Tamil, working at Tirupanandal college, and on 11.7.1995 the petitioner management passed two resolutions; one to transfer the fourth respondent to Srivaikundam college and another to transfer one Murugesan from Srivaikundam to Tirupanandal on the ground that both of them opted for migration to the respective transferred colleges. It is stated that on 19.5.1995 a resolution was passed by the educational agency of the colleges for the mutual transfer of Thirugnanasambandam and Murugesan and the resolution was passed in the presence of Srilasri Kasivasi Muthukumaraswamy Thambiram Swamigal who is the Head of the educational agency. It is stated that on 20.5.1995 letters were issued to the Joint Director, Collegiate Education, Tirunelveli and the Director of Collegiate Education, Chennai stating that in the meeting held on 19.5.1995, the management has accorded concurrence for the transfer and requested necessary permission for issuing posting orders. It is stated that both the colleges come under the same management. It is stated that subsequent to the letter of the Secretary dated 20.5.1 995, the fourth respondent withdrew his earlier request for transfer from Tirupanandal to Srivaikundam. However, on 11.7.1995, the meeting of the educational agency was held for considering the transfer of the fourth respondent to Srivaikundam and that of Murugesan to Tirupanandal and necessary resolution for transfer was passed. It is stated that Murugesan and the fourth respondent joined in the respective colleges and accepted the orders of transfer. There were exchange of correspondence between the petitioner and the Director of the Collegiate Education on the question of grant of approval for transfer, and the Commissioner of Collegiate Education by order dated 26.10.1995 refused to accord his approval for the transfer. The writ petition was filed challenging the order dated 26.10.1995.

5. Learned Single Judge of this Court held that it is not a case of mutual transfer. Learned Single Judge further held that the teaching staff cannot be transferred from one college to another even though they are under the same management. Learned Single Judge also held that the first respondent was correct in insisting that permission should have been obtained by the educational agency as a single corporate

body maintaining common seniority of teaching staff in all the colleges under its control. In this view of the matter, learned Single Judge dismissed the writ petition.

6. Mr.G.Subramaniam, learned senior counsel for the appellant submitted that Sri Kasi Mutt Educational Agency in which the Head of the Mutt is the President, had been declared to be a religious 'minority' institution in O.S.No.18 of 1985 on the file of the Sub Court, Kumbakonam which was confirmed by the District Court, Thanjavur in appeal, A.S.No.62 of 1986 and the judgment and decree of the appellate Court has become final. Learned senior counsel also referred to the decision of a Division Bench of this Court in MANONMANIAM UNIVERSITY v. K.S.ARTS COLLEGE (AIR 1997 Madras 386) and submitted that the colleges in question are established and administered by minority and both institutions are coming within the scope of Article 30(1) of the Constitution of India and both the colleges are minority colleges and prior approval of the educational agency is not necessary for the transfer of teaching staff. Learned senior counsel also referred to the decision of the Full Bench of this Court in THE CORRESPONDENT, MALANKARA SYRIAN CATHOLIC SCHOOL, MARTHANDAM v. RABINSON JACOB (1998) III MLJ 595) and submitted that the decision was rendered with reference to the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and the decision has no application as the Full Bench of this Court was dealing with the school not under the management of one corporate body. He submitted that on the facts of the case, both the colleges in question are under a single management and they are minority institutions and therefore the decision of the Full Bench of this Court has no application to the facts of the case. Learned senior counsel further submitted that the Director of Collegiate Education, by his proceedings dated 6.9.1979, has recognised that the two institutions lie under one management and since the recognition has been granted as early as 1979, it is not necessary to seek approval from the Commissioner of Collegiate Education once again that both the colleges are under the same management. Learned senior counsel submitted that there are no provisions either in the Tamil Nadu Private Colleges (Regulation) Act, 1976 (hereinafter referred to as 'the Act'), or in the Rules framed thereunder requiring the petitioner to obtain declaration that the two colleges lie under the same management. Learned senior counsel submitted that common seniority is maintained and on that basis, promotions are made and when the two lecturers have accepted the transfer, it is not open to the first respondent to refuse to accord his approval to the transfer.

7. Learned Special Government Pleader (Education), on the other hand, submitted that the order passed by the first respondent is justified and according to him, though there are no provisions of the Act requiring the management to obtain the approval that the institutions are run by the same management, and while according approval for the transfer of teaching staff from one college to another college, the educational authorities have to exercise the powers under the Act to find out whether the provisions of the Act are complied with. Learned counsel also submitted that though there are no Rules or Guidelines, the approval is needed as the Government has to sanction grants to the teaching staff and unless it is established before the educational authorities that the

two colleges come under the same management, it is not open to the management to transfer a teaching staff from one institution to another even if it is a minority institution. Learned counsel also submitted that since the Act or the Rules framed thereunder or the agreement do not provide for the transfer of teaching staff, it is not open to the appellant to transfer the teaching staff from one college to another college. Learned counsel submitted that since the transfer has been made without app roval, the transfer is not valid in the eye of law.

8. Mr.K.Chandru, learned senior counsel for the fourth respondent submitted that though the fourth respondent has not questioned the order of transfer, since the approval was not granted by the first respondent, the transfer is invalid per se and the transfer cannot be said to be incidental to service. Learned senior counsel referred to the unreported decision of this Court in W.P.No.1717 of 1976, etc. Dated 4.4.1979, where the Division Bench held that some of the provisions of the Tamil Nadu Private Colleges (Regulation) Act and the Rules are not applicable to minority institutions. Learned senior counsel also referred to the decision of the Division Bench of this Court in W. P.No.4896 of 1987 dated 21.2.1989 wherein the Bench, following the decision of this Court in W.A.No.874 of 1987, dated 23.1.1989, held that the transfer is totally illegal and without jurisdiction. Learned senior counsel submitted that the decision of the Full Bench of this Court in THE CORRESPONDENT, MALANKARA SYRIAN CATHOLIC SCHOOL, MARTHANDAM v. RABINSON JACOB (1998) III MLJ 595) would squarely apply to the facts of the case and it is not open to the management to transfer the teaching staff from one college to another even if the two colleges are under the same management as the transfer cannot be regarded as incidental to service. Learned senior counsel also submitted that it is incorrect to contend that the decree of the civil court was to the effect that two institutions are minority institutions within the meaning of Article 30 of the Constitution of India and it is incorrect that the Sub Court in the judgment in O.S.No.18 of 1985, which was confirmed by the District Court, Thanjavur in A.S.No.62 of 1986, has held that the two institutions are minority institutions.

9. We have carefully considered the submissions of Mr.G. Subramaniam, learned senior counsel for the petitioner, learned Special Government Pleader (Education) and Mr.K.Chandru, learned senior counsel for the fourth respondent. At the outset, we make it clear that we are not expressing any opinion on the question whether the two institutions are minority institutions and entitled to the protection under Article 30(1) of the Constitution of India. Though Mr.G.Subramaniam, learned senior counsel referred to the decree obtained in the Sub Court, Kumbakonam in O.S.No.18 of 1985 which was confirmed by the District Court, Thanjavur in A.S.No.62 of 1986, in our opinion, it is not necessary to go into and decide the question whether the two institutions are minority institutions for the purpose of deciding the issues that arise in the writ appeal.

10. Further, during the course of argument, a larger question also loomed large whether Saivasithanthees would constitute a minority group and whether the followers of the religion of Saivism would constitute a religious minority. A further

question also arose whether the Saivite religion or the Vaishanavite religion are two distinct and separate religions and it is not permissible to treat both the religions under a single head and name it as Hindu religion and to make the two distinct religions as one and to treat both the religions as non-minority religions as the principles and practices of the Saivite religion are far different from principles and practices of Vaishanavite religion. Though the question loomed large during the course of argument, however, we are not expressing any opinion as we felt that it is not necessary to decide that question for the purpose of this case.

11. It is clearly admitted by the learned Special Government Pleader that there is no specific provision in the Act that the educational institutions should obtain approval of the first respondent to treat the institutions as a single corporate unit. Learned Government Pleader also submitted that there are no Rules framed under the Act requiring the petitioner to obtain approval of the first respondent for getting recognition as a single corporate unit. Learned Government Pleader also submitted that no guidelines have been issued in exercise of the executive power under Article 162 of the Constitution insisting on the requirement that the educational institutions should obtain approval of the educational authorities to treat them as a single corporate unit under the Act. Learned Government Pleader has not referred to any guideline or test framed by the educational authorities for treating an educational agency as a single corporate unit.

12. Though there are no provisions in the Act or in the Rules to obtain approval of the educational authorities to treat a particular educational agency as a single corporate unit, we are of the opinion for the proper and effective enforcement of the provisions of the Act, it will be convenient for the educational agency to obtain the approval of the educational authorities to treat the educational agency as a single corporate unit when it runs more than one educational institution.

13. We are of the opinion that approval, if so obtained, will render it easy for the State educational authorities to sanction the necessary grant for the payment of salary to teachers and monitor the service conditions of the staff of the colleges. If the educational agency is allowed to transfer, without approval a teacher from one institution to another institution though they may come under the same management, such a transfer may in certain circumstances not be valid and not in accordance with law and it may result in the release of grant in favour of a teacher who was transferred not in accordance with law. We are of the view that if the transfer is made indiscriminately between two educational institutions it will lead to a situation where the educational authorities may not be in a position to implement the provisions of the Act effectively. Hence, we hold that the educational agency should obtain the necessary approval of the first respondent to treat the institutions coming under a single corporate unit as it is only on that basis, the appellant herein also approached the first respondent for the grant of approval of the transfer of the teachers.

14. The next question that arises is whether the approval of the first respondent is a pre-condition for effecting the

transfer. On the facts of the case, we hold that if the two institutions are run by one and the same educational agency as a single corporate unit, it is not necessary to obtain prior approval of the first respondent for effecting transfer. The prior approval is required under the Act in the cases of dismissal or reduction in rank of teachers and when the Act is silent as regards the requirement of obtaining prior permission for transfer between two educational institutions run under a single corporate unit, we hold that the requirement of prior approval cannot be insisted upon and it is open to the educational authority to grant approval post-facto.

15. The next question that arises on the facts of the case is whether the educational agency was treated as a single corporate unit or not. Though Mr.G.Subramaniam, learned senior counsel referred to the earlier order dated 6.9.1979, we find that the order came to be passed at the time when the Pre-University Course was abolished in the State and there were surplus Assistant Professors consequent on the abolition of Pre-University Course and the Secretary of the Tirupanandal College requested for the shifting of one Tutor in Tamil from Srivaikundam college to Tirupanandal college as there were surplus staff in the Srivaikundam college and in that context, the Director of Collegiate Education passed the order that the two institutions are under one management. We are of the view that this order cannot be taken advantage of by the appellant out of context as if the issue was considered earlier and it was decided that both the colleges come under a single corporate unit. In our view, the order came to be passed in the context of abolition of Pre-University Course resulting in surplus staff strength in the cadre of Assistant Professor in Tamil requiring adjustment of the staff among the institutions and the order has to be read in the context in which it was passed. The order dated 6.9.1979 does not disclose that the Director of Collegiate Education had gone into the question and decided that both the i nstitutions are run by a single corporate unit.

16. We hold that the approval of the first respondent is required to treat the educational agency as a single corporate unit. We approve the view of the learned Single Judge that when an educational agency is having two or three colleges under its corporate control, it has the power to transfer the teacher or the staff from one college to another, but it must be strictly in accordance with Rule 11(4) of the Rules relating to the Conditions of Service being maintained by a single corporate unit.

17. As far as the fourth respondent is concerned, the fourth respondent has not challenged the order of transfer. As far as the decision of the Full Bench of this Court in (1998) III MLJ 595) is concerned, the decision has no application as it was not established before the Full Bench of this Court that the institutions in question were run under a single corporate unit. The Full Bench of this Court also held that the question whether the transfer is incidental of service has to be determined on the facts and circumstances of each and every case. On the facts of the case before the Full Bench, it was found that the schools were treated as separate units and in the circumstances, the Full Bench held that the transfer of teachers has either expressly or

impliedly to be provided for by the statute or by the contract or must be inherent in the nature of contract or subject matter or the circumstances leading to the conclusion that the parties by necessary implication have intended it. Since the fourth respondent has not challenged the order of transfer, it is not necessary to go into the question at all as we are of the view that if an order of transfer is challenged by the person transferred, that question would have to be decided whether the transfer is impliedly provided in the the contrat entered into between the educational agency and teachers. As far as other decisions relied upon by the learned counsel for the fourth respondent are concerned, they are not cases of transfer from one institution to another under the same corporate unit.

18. We find that the first respondent has taken into consideration certain irrelevant matters while passing the order impugned in the writ petition. The impugned order refers to an order of the first respondent dated 8.7.1995, but so far as that order is concerned, it is seen from the counter affidavit that the fourth respondent has withdrawn his request for transfer on 16.6.1995 and the first respondent by order dated 8.7.1995 directed the management to get a new requisition for transfer from both the lecturers. This communication was wrongly construed as if the transfer has been made in violation of the communication made by the first respondent dated 8.7.1995. The additional reason given by the first respondent is that since there are two Secretaries, the educational agency cannot be regarded as a single corporate unit. The first respondent has not considered the fact that there is only one President for the educational agency and since two colleges are functioning in two places, two Secretaries were appointed for performing day-to-day management of the colleges and hence, the functioning of two Secretaries is not a relevant factor.

19. The next reason that was given by the first respondent is that the order of transfer was passed by the Secretary. However, this reason is palpably incorrect as the resolution was unanimously passed by the Committee headed by the President of the educational agency. Since the first respondent has taken into consideration certain irrelevant factors and it is not clear how much of the irrelevant factors influenced the mind of the first respondent in refusing to grant approval for the transfer, we are of the opinion that the impugned order challenged in the writ petition has to be quashed, and accordingly, it is quashed.

20. Though the order impugned is quashed, the petitioner is directed to apply to the first respondent for the purpose of getting the necessary approval that the educational agency is a single corporate unit running two or more educational institutions within a period of four weeks from the date of receipt of the order and if the first respondent holds that it is a single corporate unit, he is bound to accord approval to the petitioner in accordance with law. On the other hand, if he comes to the conclusion that the two institutions are not under a single corporate unit, it is open to him to pass order in accordance with law. The first respondent is directed to pass orders after affording an personal opportunity to the petitioner within a period of four weeks from the date of receipt of the application. The writ appeals are accordingly

disposed of quashing the order challenged in the writ petition, but subject to the directions earlier given. However, in the circumstances, there will be no order as to costs.

Index: Yes/No
Web site: Yes/No (N.V.B.,J.) (A.K.R.,J.)
na.
21-3-2002
Sd/-
Assistant Registrar

/true copy/
Sub Asst.Registrar (Statistics/CS)

To

1.The Commissioner of Collegiate Education,
College Road, Chennai-600 006.

2.The Regional Joint Director of Collegiate Education,
Tiruchirapalli.

3. The Regional Joint Director, Collegiate Education,
Tirunelveli.